

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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*Federal Communications Commission
Office of Secretary*

In the Matter of)

Annual Assessment of the Status of)

Competition in the Market for the)

Delivery of Video Programming)

CS Docket No. 96-133

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REPLY COMMENTS OF PRIMESTAR PARTNERS L.P.

PRIMESTAR PARTNERS L.P. ("PRIMESTAR"), by its attorneys, hereby submits its reply to the comments filed in response to the Commission's Notice of Inquiry ("NOI") in the above-captioned proceeding.¹

As described in its initial comments in this proceeding, PRIMESTAR distributes direct-to-home ("DTH") video and audio programming using a medium power Ku-Band satellite ("K-1") licensed to GE American Communications, Inc. ("GE-Americom"). PRIMESTAR plans to continue its service on the medium-power successor to K-1, GE-2, which is scheduled for launch early next year.

Various efforts have been made to transition PRIMESTAR's service from medium-power Ku-band to a high-power direct

¹ FCC 96-265 (released June 13, 1996).

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broadcast satellite ("DBS") system.² The Commission's records are replete with explanations of how and why such a transition would enable PRIMESTAR to compete more effectively with DBS services currently being offered by General Motors ("DIRECTV"), United States Satellite Broadcasting Company ("USSB") and EchoStar Communications Corp. ("EchoStar"), and soon to be offered by a joint venture of MCI and Australian-based News Corp. To date, none of these efforts has been successful, and each has been vigorously opposed by existing or potential DBS providers seeking to prevent the advent of increased competition from a well-financed, experienced provider of DTH satellite service such as PRIMESTAR.

Two parties offering comments in response to the Commission's NOI, DIRECTV, an existing DBS provider, and the National Rural Telecommunications Cooperative ("NRTC"), whose members and affiliated companies currently market and distribute DIRECTV, use this proceeding as a forum to advance once again the self-serving and meritless position that the provision of DBS service by entities such as PRIMESTAR, whose majority owners are cable television operators, should be prohibited. DIRECTV suggests that, because of its affiliation with cable MSOs, permitting PRIMESTAR "unfettered entry into

² See Advanced Communications Corporation v. FCC, Nos. 95-1551, 95-1560, 95-1561 (D.C. Cir. 1996); In the Matter of TelQuest Ventures, L.L.C. and Western Telecommunications, Inc., File Nos. 758-DSE-P/L-96, 759-DSE-L-96, 844-DSE-P/L-96, Report and Order (released July 15, 1996).

DBS simply makes no policy sense."³ NRTC argues that cross-ownership between cable programmers and DBS operators would adversely affect the program distribution market nationwide, and urges the Commission to prohibit such cross-ownership.⁴

PRIMESTAR is compelled to reemphasize, therefore, for the record in this proceeding, that the Commission has examined the question of cable/DBS cross-ownership thoroughly and has concluded that there is no need to ban cable-affiliated multichannel video program distributors ("MVPDs") from utilizing DBS resources, as DIRECTV and NRTC would prefer. In fact, the Commission has reaffirmed its belief that "cable-affiliated MVPDs bring certain positive attributes as DBS permittees."⁵ In revising the rules and policies for the DBS service last December, the Commission determined that allowing cable participation in DBS is fully consistent with Commission policy and precedent and dismissed the need for "cable-specific" restrictions on DBS entry.⁶

³ Comments of DIRECTV at 3.

⁴ Comments of NRTC at 5.

⁵ *In the Matter of Policies and Rules for the Direct Broadcast Satellite Service, Report and Order*, IB Docket No. 95-168, PP Docket No. 93-253 (released December 15, 1995) ("DBS Order") at ¶ 73.

⁶ In adopting a spectrum aggregation rule that prohibited any party from acquiring at auction an attributable interest in channels at a second full-CONUS location, the Commission determined that there is no evidence indicating that control of channels at multiple orbital locations is a concern unique to MVPD-affiliated DBS operators. DBS Order at ¶¶ 73-79. While purporting to be concerned with increasing competition in the DBS

In further support of its contention that non-DBS affiliated MVPDs seeking to compete in the DBS arena be subject to more onerous regulation than other DBS providers, DIRECTV claims that "PRIMESTAR is nothing more than an alternative distribution outlet for cable operators, and lacks the incentive to develop the DBS business or technology in a manner that will be truly competitive with cable."⁷ Again, in revising its DBS rules and policies, the Commission saw no need to adopt conduct rules "to ensure that DBS services are not offered as 'ancillary' to cable or to ensure that a cable-affiliated DBS operator will compete against other DBS subscribers in cabled areas."⁸ The Commission expressly stated that "there is little direct evidence of anticompetitive behavior specific to the DBS context."⁹

Further, the Commission specifically addressed the concerns expressed by NRTC, and determined that "no protections beyond those already provided by the program access rules are necessary to protect against anticompetitive abuses."¹⁰ Moreover, the Commission concluded that there is no evidence that exclusive arrangements or other

arena through its efforts to constrict PRIMESTAR's entry, DIRECTV has vigorously opposed any spectrum limitations that would prohibit DIRECTV from obtaining the lion's share of DBS spectrum resources.

⁷ Comments of DIRECTV at 3.

⁸ DBS Order at ¶ 105.

⁹ Id.

¹⁰ Id. at ¶¶ 106-107.

discriminatory conduct favoring a cable-DBS operator currently pose any anticompetitive concern.¹¹

It is utterly incongruous for DIRECTV and its distribution arm, NRTC, to base their arguments in support of "vigorous regulatory oversight" of PRIMESTAR's efforts to enter the DBS arena on the notion that PRIMESTAR has no intention to see DBS succeed as a competitive alternative. If DIRECTV really believed that PRIMESTAR had no intention to compete, it would welcome PRIMESTAR's entry into the DBS arena. Simply put, DIRECTV's comments in this proceeding merely are another attempt to cast PRIMESTAR, a potential competitive counterweight, in a negative light and thus to forestall PRIMESTAR's entry into the DBS arena.

By all accounts, the DBS service is thriving. The record in this proceeding indicates that some sources estimate that there are currently almost 5 million DBS subscribers, and that figure may expand to as high as 21 million in less than 4 years.¹² Competition in the DBS equipment market has increased, and equipment prices have fallen. As behemoths like MCI, and AT&T, through its investment in and agreement with DIRECTV to market and distribute DIRECTV service and DSS equipment, enter the

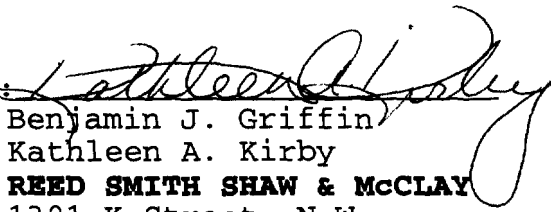
¹¹ Id.

¹² Comments of Time Warner Cable at 8 (citing Russell Shaw, "Special Report: DBS Goes After Cable Audience With Pricey Promotion Drive," Electronic Media, April 22, 1996 at 22).

arena, intra-DBS competition, as well as the potency of DBS as an alternative MVPD, will increase. Given the certainty of increased competition, it is nonsensical to conclude, as do DIRECTV and NRTC, that the marketplace is deserving of more, rather than less, regulatory oversight than the Commission, after thorough consideration, has deemed necessary.

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I, Lynne M. Hensley, a legal secretary with the law firm of Reed Smith Shaw & McClay, hereby certify a copy of the **REPLY COMMENTS OF PRIMESTAR PARTNERS L.P.** were mailed by first class mail, postage prepaid, this 19th day of August, 1996 to the following:

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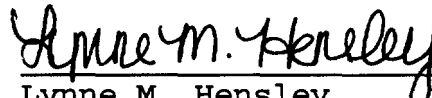
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